

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS: 04-0408**  
**Sales and Use Tax**  
**For Tax Period 2001-2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I.     Sales and Use Tax—Leasing**

**Authority:** Ind. Code § 6-2.5-4-10; Ind. Code § 6-8.1-5-1.

Taxpayer protests the imposition of use tax with respect to equipment leased by it from Taxpayer's owners.

**II.    Tax Administration: Negligence Penalty**

**Authority:** Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the assessment of a negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a limited liability company that performs improvements to realty. In addition, Taxpayer's owners operate a farm with animals and crops. Taxpayer's owners lease inherited land, barns and excavating equipment to Taxpayer. The leases in question are the owners' only leases. As a result of an audit, Taxpayer was assessed use tax and penalty, which Taxpayer has protested.

**DISCUSSION**

**I.     Sales and Use Tax—Leasing**

In general, the lease or rental of tangible personal property is subject to sales tax. Ind. Code § 6-2.5-4-10(a), which stated during the relevant period "[a] person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person."

Here, Taxpayer has presented an argument related to *self-employment taxes*. It noted that real estate was also being leased to Taxpayer, which would not subject the combined lease to self-employment taxes according to Taxpayer. This does not go to the question at hand: whether Taxpayer leased tangible personal property from its owners. While the rental of real estate may

or may not be subject to sales or use tax, neither Taxpayer nor its owners separated the amounts for leases of real property or personal property. Taxpayer has also sought the benefit of depreciation deductions for the property in question, lending more credence to the notion that Taxpayer and its owners sought the benefits of their transaction as a business transaction. Further, the leases in question totaled over \$130,000 for the years in question—not exactly an isolated transaction. Accordingly, the auditor’s determination that the rentals represented tangible personal property has not been rebutted—its burden per Ind. Code § 6-8.1-5-1, and thus Taxpayer’s protest is denied

### **FINDING**

Taxpayer’s protest is denied.

## **II. Tax Administration: Negligence Penalty**

The Department may impose a ten percent (10%) negligence penalty. Ind. Code § 6-8.1-10-2.1 and 45 IAC 15-11-2. Taxpayer’s failure to timely file income tax returns, generally, will result in penalty assessment. Ind. Code § 6-8.1-10-2.1(a)(1). The Department, however, may waive this penalty if the taxpayer can establish that its failure to file “was due to reasonable cause and not due to negligence.” 45 IAC 15-11-2(c). A taxpayer may demonstrate reasonable cause by showing “that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed....” *Id.* Taxpayer has not made the necessary showing in this case.

### **FINDING**

Taxpayer’s protest is denied.